

Allen Ho  
Office of Petitions  
United States Patent and Trademark Office  
1/24/2008  
Re: Application 09/287,478 Abandonment

Dear Mr. Ho,

Thank you for your call this morning notifying me of abandonment due to a late filing of a response to the first Notification of Non-Compliant Amendment.

I believe you indicated that the patent became abandoned on 3/15/2007 for a late response. However, the Notification had a mail date of 2/13/2007 with a 30-day response window, which because of the shortened month expired on 3/15/2007, so, in fact, the response was timely filed.

This question actually had come up before and I believe it is settled. I was actually all set to go with a petition for 3/15/2007 tonight when I remembered that because it was February, the 30-day rather than 1-month rule came into play. This is an excellent reason to have software to check these dates. Actually you can do this with Excel by simply entering the two dates into two different cells and creating a third with a formula that subtracts the two and formats the result as an ordinary number.

<http://office.microsoft.com/en-us/excel/HP030561111033.aspx>

Two other issues raised this morning were,

1) The ability of the examiner to wave abandonment for delayed payment of appeal brief fee, where a good-faith effort was made to respond. This would seem to be in my favor, but I hope you might have handy that would support.

2) The availability of extensions to respond to actions where all available extensions have been "used up". I raised this issue with many persons around the 8/17/2007 and received varying opinions. The final word I had from Brian Johnson, Quality Assurance Specialist for AU 2100, was that AT LEAST AS FAR AS APPEAL PROCEEDINGS ARE CONCERNED, there is NO "cumulative limit" to 37 CFR 1.136.

So, my understanding as of right now, is that abandonment is as of 1/17/2008 and I have 90 days to rectify by

filing a petition to revive with fee and 5 month extension, but the sooner the better in case more problems lurk with a 1-year limit. I know you are very busy, but I hope you might share this correspondance with the coworker you had discussed this with previously.

Best regards,  
Chris Rode  
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